

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

Wheeling Division

DIANA MEY,
CRAIG CUNNINGHAM,
STEWART ABRAMSON,
JAMES SHELTON,
DAVID and ROXY VANCE,
RUSSELL LOCKE, and THOMAS STARK,
individually and on behalf of a class of all
persons and entities similarly situated,
Plaintiffs,

v.

DIRECTV, LLC,

Defendant.

Case No.: 5:17-cv-00179-JPB

**DIRECTV, LLC's PARTIAL MOTION TO DISMISS PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 12(B)(2) AND 12(B)(6)**

For the reasons set forth below and in the attached memorandum, DIRECTV, LLC moves to partially dismiss Plaintiffs' claims under Fed R. Civ. P. 12(b)(2) and 12(b)(6).

First, Diana Mey must proceed with her claims in arbitration, for all the reasons described in DIRECTV's initial motion to compel arbitration (Dkt. No. 15).

Second, the Court lacks personal jurisdiction over DIRECTV with respect to the claims of Craig Cunningham ("Cunningham"), Stewart Abramson ("Abramson"), and James Shelton ("Shelton"). The claims of these three Plaintiffs arise out of alleged telemarketing calls from third-party retailers authorized to sell DIRECTV service, but no contacts related to those calls allegedly occurred in West Virginia.

Finally, in Count I, Plaintiffs allege violations of 47 U.S.C. § 227(b)(1)(B) of the Telephone Consumer Protection Act (“TCPA”). That provision of the TCPA, however, only prohibits calls made to cellular telephone numbers without the consent of the called party if the calls are made using a prerecorded voice or an “automatic telephone dialing system” (“ATDS”). To the extent the calls alleged by Plaintiffs were not sent with a prerecorded voice, Plaintiffs must allege the use of an ATDS to state a claim. But the statutory definition of an ATDS covers only equipment that can generate numbers randomly or sequentially, and nothing in the complaint plausibly alleges that any of the calls were sent using that type of equipment.

/s/ Danielle M. Waltz

Danielle M. Waltz (WVSB #10271)
JACKSON KELLY PLLC
500 Lee Street East, Suite 1600
Charleston, WV 25301
Telephone: (304) 340-1000
Email: dwaltz@jacksonkelly.com

Hans J. Germann (*admitted pro hac vice*)
Kyle J. Steinmetz (*admitted pro hac vice*)
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
Telephone: (312) 782-0600
Email: hgermann@mayerbrown.com
Email: ksteinmetz@mayerbrown.com

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

Wheeling Division

DIANA MEY,
CRAIG CUNNINGHAM,
STEWART ABRAMSON,
JAMES SHELTON,
DAVID and ROXY VANCE,
RUSSELL LOCKE, and THOMAS STARK,
individually and on behalf of a class of all
persons and entities similarly situated,
Plaintiffs,

v.

DIRECTV, LLC,

Defendant.

Case No.: 5:17-cv-00179-JPB

CERTIFICATE OF SERVICE

I, Danielle M. Waltz, counsel for Defendant DIRECTV, LLC, hereby certify that on this 23d day of October, 2020, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Danielle M. Waltz

Danielle M. Waltz (WVSB #10271)
JACKSON KELLY PLLC
500 Lee Street East, Suite 1600
Charleston, WV 25301
Telephone: (304) 340-1000
Email: dwaltz@jacksonkelly.com